

Internal Revenue Service

Number: **201651010**

Release Date: 12/16/2016

Index Number: 355.00-00, 355.01-00,
361.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:4

PLR-116321-16

Date:

September 13, 2016

LEGEND

Distributing =

Controlled =

State A =

Business B =

Business C =

Sub-
Business C =

d =

e =

f =

h =

i =

k =

Date 1 =

Dear :

This letter responds to your May 18, 2016 letter requesting rulings on certain federal income tax consequences of a series of transactions (the “Proposed Transaction” as defined herein). The material information provided in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties-of-perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2016-1, 2016-1 I.R.B. 18, regarding rulings on one or more significant issues that involve the tax consequences of a transaction (or part of a transaction) occurring in the context of a distribution under Section 355 of the Internal Revenue Code (the “Code”). This office has not reviewed any information pertaining to and expresses no opinion as to the overall tax consequences of the Proposed Transaction (as defined herein), including qualification under section 355 of the Code, or as to any issue or step not specifically addressed by this letter. Rather, the rulings contained in this letter only address discrete legal issues involved in the transaction. Further, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

FACTS

Distributing is a State A corporation, the stock of which is publicly traded and widely held. Distributing is the parent of a group of direct and indirect subsidiaries and related entities (the “Distributing Worldwide Group”). Distributing is also the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return. The Distributing Worldwide Group conducts Business B and Business C.

Distributing has decided to separate Business C from Business B (the “Separation”). The Separation is being effected for compelling corporate business reasons. Specifically, the Separation will: (i) sharpen strategic and management focus; (ii) allow each business to more effectively pursue its own distinct capital structure and capital

allocation strategies; (iii) improve the businesses' ability to use stock as acquisition currency; (iv) improve the ability to attract, retain, and incentivize employees; and (v) improve access to equity capital and attract a long-term investor base for each business.

Distributing intends to effect the Separation through the contribution of the assets and liabilities associated with Business C to a newly-formed domestic corporation, followed by a distribution of stock of such corporation to its shareholders.

PROPOSED TRANSACTION

Distributing proposes to undertake, pursuant to one overall plan, a number of transaction steps in connection with the Separation, some which have been partially consummated (collectively, the "Proposed Transaction"). The relevant steps of the Proposed Transaction are set forth below:

1. On Date 1, Distributing formed a new U.S. corporation ("Controlled"). Controlled has a single class of stock outstanding, its common stock ("Controlled Common Stock").
2. The assets and liabilities of, and entities engaged in, Business C will be separated from the assets and liabilities of, and entities engaged in, Business B, through a series of internal restructuring transactions, including sales, contributions, reorganizations, liquidations, and distributions.
3. Distributing will contribute the assets and liabilities of (including equity interests of entities engaged in) Business C to Controlled (the "Controlled Contribution").
4. The outstanding shares of Controlled Common Stock held by Distributing will be recapitalized into such number of shares of Controlled Common Stock as is equal to the sum of (i) the number of such shares to be distributed in the Distribution and (ii) the number of such shares representing up to a d% voting and economic interest in Controlled (the "Retained Shares").
5. Distributing will distribute all of the shares of Controlled Common Stock, other than the Retained Shares, to its shareholders (the "Distribution," and the retention of the Retained Shares, the "Retention"). No fractional shares of Controlled Common Stock will be distributed in the Distribution. Instead, all fractional shares of Controlled Common Stock that Distributing shareholders otherwise would be entitled to receive will be aggregated by a distribution agent, and as soon as practicable following the effective time of the Distribution will be sold in the public market at the prevailing price. The net cash proceeds of these sales will be distributed pro rata (based on the fractional share such shareholder

would otherwise be entitled to receive) to those shareholders who would otherwise have been entitled to receive fractional shares.

6. Distributing intends to exchange some or all of the Retained Shares for existing debt instruments of Distributing (the "Exchange Debt") with holders of Exchange Debt either directly or through a financial intermediary (the "Debt-for-Equity Exchange"). In the event Distributing uses a financial intermediary to effect the Debt-for-Equity Exchange, one or more investment banks (the "Investment Banks"), acting as principals for their own account, will acquire Exchange Debt in a tender offer to existing holders of Exchange Debt (the "Debt Tender"). The Debt-for-Equity Exchange may occur up to e months following the Distribution, depending on market conditions.

In the event that Distributing engages a financial intermediary, no sooner than i days following the acquisition of the Exchange Debt by the Investment Banks, Distributing and the Investment Banks will enter into an exchange agreement (neither being legally obligated to do so) pursuant to which Distributing will exchange some or all of the Retained Shares with the Investment Banks for the Exchange Debt held by the Investment Banks (the "Exchange Agreement"). The Debt-for-Equity Exchange will occur at least h days after the Debt Tender.

The exchange ratio in the Debt-for-Equity Exchange (which will not be determined earlier than j days following the Debt Tender) will be at fair market value based on arm's-length negotiations between Distributing and the Investment Banks. Based on market practice, the fair market value of the Exchange Debt likely will be determined taking into account relevant factors that are intended to reflect the costs to the Investment Banks of acquiring the Exchange Debt (including, for example, the cash purchase price paid by the Investment Banks in the Debt Tender, accrued but unpaid interest in respect of the Exchange Debt, and the transaction fees paid by the Investment Banks in connection with the Debt Tender).

The Investment Banks may finance the Debt Tender in a manner customary for financing dealer inventory, which may include pledging the Exchange Debt as collateral, executing repurchase contracts with respect to the Exchange Debt (which may permit the Investment Banks to re-hypothecate the Exchange Debt), entering into total return swaps over the Exchange Debt, and engaging in similar financing transactions. The Investment Banks may hedge all or a portion of their interest and/or credit exposure to the Exchange Debt in one or more transactions with third parties (other than Distributing, Controlled, or any member of their respective affiliated groups) prior to entering into the Exchange Agreement and engaging in the Debt-for-Equity Exchange. The Investment Banks are not expected to make representations as to the U.S. federal income tax treatment or status of their customary inventory financing activities. If the Exchange Agreement is entered into, it is also expected that an underwriting agreement with the Investment Banks will be entered into at the same time, pursuant to which there

will be an offering of the Retained Shares to be exchanged in the Debt-for-Equity Exchange to investors.

Following the Distribution, Distributing and its direct and indirect subsidiaries and related entities (the “Distributing Group”) on the one hand, and Controlled and its direct and indirect subsidiaries and related entities (the “Controlled Group”) on the other hand, will be parties to certain continuing arrangements and relationships (collectively, the “Continuing Arrangements”). The Continuing Arrangements will likely include: (i) a Separation and Distribution Agreement; (ii) an Employee Matters Agreement; (iii) a Tax Matters Agreement; (iv) a Transition Services Agreement; (v) Intellectual Property License Arrangements; (vi) Real Estate Arrangements; (vii) a Supply Agreement; (viii) Sub-Business C Arrangements; (ix) a Spare Parts Loan Agreement; and (x) a Stockholder and Registration Rights Agreement. These Continuing Arrangements will be for varied durations, and will be priced either at arm’s length terms or cost or cost-plus basis.

REPRESENTATIONS

1. The business purpose for the Retention is to: facilitate the implementation of appropriate capital structures at both Distributing and Controlled; avoid burdening Controlled’s balance sheet; and ensure Distributing has sufficient liquidity, flexibility, and financial resources available to fund payment of debt and other obligations, as well as investments in the growth of its business necessary to successfully execute its growth strategy.
2. The Retained Shares will be voted in proportion to the votes cast by Controlled’s other stockholders. Distributing will grant Controlled a proxy with respect to the Retained Shares requiring such manner of voting.
3. Distributing will dispose of the Retained Shares as soon as a disposition is warranted consistent with the business purpose for the Retention (after the expiration of any post-Distribution lock-up period that may be agreed to by Distributing; such lock-up period shall in no event exceed k days), but in any event, not later than the date that is f years following the Distribution (or promptly thereafter).
4. None of Distributing’s directors or officers will serve as directors or officers of Controlled as long as Distributing retains the Retained Shares.
5. None of the Exchange Debt was issued in anticipation of the Distribution.
6. Any Investment Bank acquiring Exchange Debt in connection with the Debt-for-Equity Exchange will hold the Exchange Debt for at least j days prior to entering into an agreement to exchange it for all or a portion of the Retained

Shares, and will not consummate the Debt-for-Equity Exchange until at least h days after such Investment Bank acquires the Exchange Debt.

RULINGS

1. The Retention by Distributing of the Retained Shares will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax within the meaning of section 355(a)(1)(D)(ii) and Treasury Regulation section 1.355-2(e).

2. Provided the Retained Shares are transferred by Distributing in the Debt-for-Equity Exchange within e months following the Distribution, the Debt-for-Equity Exchange will be treated as distributed pursuant to the plan of reorganization for purposes of section 361(c), and such Debt-for Equity Exchange will be treated as transferred to creditors for purposes of section 361(c)(3).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the proposed transaction that is not specifically covered by the above rulings.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling [PLR-116321-16].

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)